

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DWAYNE GRANT, *et al.*,  
Plaintiffs,

v.

No. 1:22-cv-00186

U.S. ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*,  
Defendants.

HON. HALA Y. JARBOU

MAG. JUDGE PHILLIP J. GREEN

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DARETHA BRAZIEL, *et al.*,

Plaintiffs,

No. 1:21-cv-00960

v.

HON. HALA Y. JARBOU

GOVERNOR GRETCHEN WHITMER, MAG. JUDGE PHILLIP J. GREEN  
*et al.*,  
Defendants.

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**STATE DEFENDANTS' MOTION TO DISMISS PURSUANT TO FEDERAL  
RULE OF CIVIL PROCEDURE 12(b)(1)**

State Defendants (Governor Gretchen Whitmer; Michigan Department of Environment, Great Lakes & Energy (EGLE); Michigan Department of Health and Human Services (DHHS); Liesl Clark; Eric Oswald; Robert Gordon; and Elizabeth Hertel) respectfully move, under Federal Rule of Civil Procedure 12(b)(1), to dismiss the federal claims asserted against them in the complaints filed in *Grant et al.*

*v. U.S. Environmental Protection Agency, et al.*, Case No. 1:22-cv-00186,<sup>1</sup> and

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<sup>1</sup> Per the directive of this Court during the status conference on October 20, 2020, this motion addresses only the federal claims raised in the pending class action

*Braziel et al. v. Governor Gretchen Whitmer*, Case No. 1:21-cv-00960. In support, State Defendants state:

1. The Eleventh Amendment prevents this Court from exercising subject-matter jurisdiction over Plaintiffs’ federal claims against EGLE, DHHS, and the individual State Defendants in their official capacities.

- a. Claims against state agencies and officials acting in their official capacities are barred by Eleventh Amendment immunity absent an express waiver or congressional abrogation, neither of which is present here. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100–102 (1984).
- b. The doctrine established by *Ex parte Young*, 209 U.S. 123 (1908), does not apply here because there is no violation of federal law, ongoing or otherwise, and the relief sought is not prospective.

Pursuant to W.D. Mich. L.R. 7.1(d), State Defendants’ counsel and Plaintiffs’ counsel held a conference on December 14, 2022 in which State Defendants’ counsel confirmed this motion will be opposed.

State Defendants request this Court grant their motion to dismiss for the reasons set forth above, which are described more fully in the accompanying brief, and enter its judgment for them on all counts.

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cases. The state law claims detailed in the *Grant* complaint will be addressed in a future motion if this Court opts to exercise supplemental jurisdiction.

Respectfully submitted,

/s/ Rebecca M. Smith

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Dated: December 16, 2022

LF: Benton Harbor-Brazier v EGLE (WD #1:21-cv-960)/AG #2022-0340082-A/Motion to Dismiss b1 2022-12-16